Resource Management Guide No. 212
Prescribing officials for non-corporate Commonwealth entities
Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the following website: www.itsanhonour.gov.au/coat-arms.

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This guide contains material that has been prepared to assist Commonwealth entities and companies to apply the principles and requirements of the Public Governance, Performance and Accountability Act 2013 and associated rules, and any applicable policies. In this guide: the mandatory principles or requirements are set out as things entities and officials ‘must’ do; and actions, or practices, that entities and officials are expected to take into account to give effect to those principles and/or requirements are set out as things entities and officials ‘should consider’ doing.
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Audience

This guide is relevant to accountable authorities and their delegates of all non-corporate Commonwealth entities (NCCEs) who engage consultants or independent contractors (referred to collectively as ‘contractors’ in this guide) who are not part of a Commonwealth entity to manage public resources.

Key points

This guide:

- provides guidance on who is an official:
  - The term ‘official’ is defined in section 13 of the Public Governance, Performance and Accountability Act 2013 (PGPA Act).
  - The accountable authority of an NCCE can only delegate powers, functions and duties under the PGPA Act or the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) (referred to collectively as ‘powers’ in this guide) to officials.
- provides guidance on item 1A in section 9(1) of the PGPA Rule, which commences on 1 July 2015:
  - Item 1A enables an accountable authority of an NCCE to prescribe a person who is a contractor, or an employee of a contractor (referred to collectively as ‘contracted individual’) as an official for the purposes of the PGPA Act. This will enable the contracted individual to exercise powers under the PGPA Act or PGPA Rule.
  - If a contracted individual undertakes tasks on behalf of an NCCE without exercising powers under the PGPA Act or PGPA Rule, they do not need to be prescribed as an official.

Resources

This guide is available on the Department of Finance website at www.finance.gov.au. Other relevant publications include:

- Resource Management Guide No. 200: General duties of accountable authorities
- Resource Management Guide No. 203: General duties of officials
- Resource Management Guide No. 303: Other CRF money
- Resource Management Guide No. 400: Approving commitments of relevant money
Part 1 – Introduction

1. This document provides guidance on who is an official for the purposes of the PGPA Act. It also describes the process for prescribing contracted individuals as officials of NCCEs to allow them to exercise powers under the PGPA Act or PGPA Rule.

2. The PGPA Act is designed to ensure that individuals exercising powers under the Act conduct themselves according to the standards established by the Act. It does this by limiting the exercise of powers under the PGPA Act or PGPA Rule to officials and by regulating the behaviour of those officials through a set of duties they are required to comply with. These provisions are intended to give confidence to the Parliament and the public that public resources are being managed properly.

Part 2 – Who is an official?

3. Section 13 of the PGPA Act governs who is an official. This section is set out below:

Public Governance, Performance and Accountability Act 2013

Section 13—Officials

(1) Each Commonwealth entity has officials.

Officials of Commonwealth entities (other than listed entities)

(2) An official of a Commonwealth entity (other than a listed entity) is a person who is in, or forms part of, the entity.

(3) Without limiting subsection (2), an official of a Commonwealth entity (other than a listed entity) includes:
   (a) a person who is, or is a member of, the accountable authority of the entity; or
   (b) a person who is an officer, employee or member of the entity; or
   (c) a person, or a person in a class, prescribed by an Act or the rules to be an official of the entity.

(4) Despite subsections (2) and (3), each of the following is not an official of a Commonwealth entity (other than a listed entity):
   (a) a Minister;
   (b) a judge;
   (c) a consultant or independent contractor of the entity (other than a consultant or independent contractor of a kind prescribed by an Act or the rules for the purposes of paragraph (3)(c));
   (d) a person, or a person in a class, prescribed by an Act or the rules not to be an official of the entity.

Officials of listed entities

(5) An official of a Commonwealth entity that is a listed entity is a person who is prescribed by an Act or the rules to be an official of the entity.

4. Under section 13 of the PGPA Act, there are different criteria for determining who are officials of listed entities (including listed NCCEs) and who are officials of Commonwealth entities in general (including non-listed NCCEs).
Officials of listed non-corporate Commonwealth entities

5. A listed entity is defined in section 8 of the PGPA Act as:
   (a) any body (except a body corporate), person, group of persons or organisation (whether or not part of a Department of State); or
   (b) any combination of bodies (except bodies corporate), persons, groups of persons or organisations (whether or not part of a Department of State);
   that is prescribed by an Act or the rules to be a listed entity.

6. All NCCEs are listed entities except for Departments of State and Parliamentary Departments.

7. A person is only an official of a listed entity if they are prescribed by an Act or the PGPA Rule to be an official. Contracted individuals are *not* officials of a listed entity unless they are specifically prescribed to be officials of the entity under Schedule 1 to the PGPA Rule, the entity's enabling legislation, or item 1A in section 9(1) of the PGPA Rule.

Officials of non-listed non-corporate Commonwealth entities

8. Non-listed NCCEs comprise Departments of State and Parliamentary Departments. A person is an official of a non-listed NCCE if they are in, or form part of, the entity. A person is in, or forms part of, the entity if they are engaged as an employee of the entity. Under section 6 of the *Public Service Act 1999* (PS Act), a person may be engaged as an employee of an entity under section 22 of the PS Act or under the authority of another Act (for example, section 22 of the *Parliamentary Service Act 1999*).

9. A person does not have to be engaged on an ongoing basis to be an official of a non-listed NCCE. For example, section 22 of the PS Act provides that an agency head can engage an employee:
   (a) as an ongoing APS employee; or
   (b) for a specified term or for the duration of a specified task; or
   (c) for duties that are irregular or intermittent.

10. Furthermore, section 13(3)(c) of the PGPA Act provides that a person, or a person in a class, may be prescribed by an Act or the rules to be an official of a Commonwealth entity (other than a listed entity).

11. Under section 13(4)(c) of the PGPA Act, the default position is that contracted individuals are not officials, unless they are specifically prescribed to be officials for the purposes of section 13(3)(c) of the PGPA Act.

Prescribing officials

12. Sections 13(3)(c) and 13(5) of the PGPA Act allow a person who would otherwise not be an official to be prescribed as an official of an NCCE.

13. Section 9 of the PGPA Rule prescribes certain persons to be, or not to be, officials of Commonwealth entities.

14. Item 1A in section 9(1) of the PGPA Rule, which applies to all NCCEs (listed and non-listed), allows individuals who are contracted individuals to be prescribed as officials when the accountable authority engages them to provide services that involve the exercise of powers under the PGPA Act or PGPA Rule.
An accountable authority should carefully consider any decision to prescribe a contracted individual as an official. It is expected that the accountable authority would only engage a contracted individual in an arrangement requiring the exercise of powers under the PGPA Act or PGPA Rule where it is not practicable for an official of the entity to do so.

15. An accountable authority should carefully consider any decision to prescribe a contracted individual as an official. It is expected that the accountable authority would only engage a contracted individual in an arrangement requiring the exercise of powers under the PGPA Act or PGPA Rule where it is not practicable for an official of the entity to do so.

16. Any person who is an official under the PGPA Act – including a contracted individual prescribed as an official – must comply with the general duties of officials under sections 25 to 29 of the PGPA Act. These duties include the duty to act honestly, in good faith and for a proper purpose under section 26 of the PGPA Act. For further information on the duties of officials, see Resource Management Guide No. 203: General duties of officials.
17. An accountable authority has a duty under section 16 of the PGPA Act to establish systems relating to internal controls and risk management and oversight for an NCCE. Note 2 to section 16 explicitly states that this duty includes managing contractors who work for the entity, whether they are officials or not. As part of fulfilling this duty, the accountable authority must implement measures directed at ensuring that officials of the entity comply with the finance law, as defined by the PGPA Act. These measures may include instructions issued by the accountable authority under section 20A of the PGPA Act. The accountable authority instructions (AAIs) may relate to the proper use and management of public resources, which the accountable authority is required to promote under section 15(1)(a) of the PGPA Act. For further information on the duties of accountable authorities, see Resource Management Guide No. 200: General duties of accountable authorities.

18. The PGPA Act and PGPA Rule confer certain powers relating to the management of public resources on the Finance Minister and accountable authorities. Some of these powers can be delegated to officials of an NCCE, including the power to approve commitments of relevant money.


20. In order for an official to exercise any of these powers, the accountable authority must delegate the power to the official through an instrument of delegation made under section 110 of the PGPA Act. An official – including a contracted individual who is prescribed as an official – cannot exercise powers under the PGPA Act or PGPA Rule for an NCCE without a valid delegation.

21. Section 110 of the PGPA Act relevantly provides:

(1) The accountable authority of a non-corporate Commonwealth entity may, by written instrument, delegate to an official of a non-corporate Commonwealth entity any powers, functions or duties under this Act or the rules, including:

(a) this power to delegate in relation to powers, functions and duties conferred directly by this Act or the rules on the accountable authority; and

(b) powers, functions or duties that have been delegated by the Finance Minister to the accountable authority under subsection 107(1).

Part 4 – Prescribing a contracted individual as an official

22. The following steps illustrate how an NCCE might prescribe a contracted individual as an official under item 1A in section 9(1) of the PGPA Rule:

(a) Identify the requirement to exercise powers: The accountable authority or their delegate needs to determine whether the contracted individual will need to exercise a power under the PGPA Act or PGPA Rule, as item 1A(b) in section 9(1) of the PGPA Rule specifies that an individual is required to exercise a power in order to be prescribed as an official. If the individual is not required to exercise a power, they cannot be prescribed as an official.

(b) Enter into an arrangement: The arrangement can be made directly with the contracted individual (under item 1A(a)(i) in section 9(1) of the PGPA Rule) or with their employer (under item 1A(a)(ii) in section 9(1) of the PGPA Rule). The arrangement should:
i. state that the relevant contracted individual will be an official of the NCCE

ii. specify the process for informing the contracted individual that they are required to comply with the general duties of officials under the PGPA Act and the finance law, including the AAIs

iii. specify the powers under the PGPA Act or PGPA Rule to be exercised by the contracted individual

iv. specify how the contracted individual will be identified (and therefore ‘prescribed’ as an official – see (c) below)

v. specify the process by which the accountable authority is to be informed of, and agree to, any changes to the contracted individuals required to exercise powers. This process should include how any replacement individuals are to be made aware of their status as officials and their duties under the PGPA Act.

(c) **Prescribe the contracted individual as an official:** The accountable authority must implement controls that ensure that contracted individuals who are to exercise powers under the PGPA Act or PGPA Rule can be identified at any point in time by name, as required under item 1A(c) in section 9(1) of the PGPA Rule. Such a control could include an internal register of individuals’ names and positions, or provisions in the contract between the NCCE and the contracted individual or their employer that record the contracted individuals’ names.

(d) **Delegate powers:** Finally, the accountable authority needs to delegate the powers that the contracted individual is to exercise. The accountable authority may subdelegate this delegation power to other officials of the NCCE. In making a decision to subdelegate this power, the accountable authority should consider both operating efficiency and accountability.

(e) **Exercise of powers:** the contracted individual can exercise those powers under the PGPA Act or PGPA Rule in accordance with the contract, delegation instrument, the AAIs and the general duties of officials under the PGPA Act.

23. Contracted individuals cannot be prescribed as officials when they are only required to perform processing tasks that do not require them to exercise powers under the PGPA Act or PGPA Rule. Examples of processing tasks include:

   (a) making payments of relevant money at the direction of an official of a NCCE

   (b) collecting relevant money under the direction of a NCCE

   (c) a contracted individual from a salary packaging company transferring money from a Commonwealth entity’s bank account to a supplier that provides benefits to employees of the entity

24. Where a contracted individual has custody of money as a legal agent of the Commonwealth, the money is ‘other CRF money’ and subject to section 105 of the PGPA Act and section 29 of the PGPA Rule. Such an individual need not be prescribed as an official of the relevant entity and is not subject to the duties of officials set out in the PGPA Act. For further information on other CRF money, see Resource Management Guide No. 303: *Other CRF money*.

25. The following flow chart shows the steps outlined above in paragraph 22 that an NCCE should consider when engaging an individual to undertake functions on behalf of the entity.

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1 Note that from 1 July 2015, drawing rights are no longer required to make payments of relevant money.
1. IDENTIFY A NEED TO EXERCISE PGPA ACT POWERS
Is a contracted individual required to exercise a power under the PGPA Act or PGPA Rule?

2. ENTER INTO CONTRACT
The arrangement with the contracted individual should:
- state that the relevant contracted individual will be an official of the NCCE
- specify the process for informing the contracted individual of their duties as an official under the PGPA Act
- specify the powers under the PGPA Act or PGPA Rule that the contracted individual will exercise
- specify how the contracted individual is to be identified
- specify the process for changes to the contracted individual

3. PRESCRIBE AS AN OFFICIAL
The accountable authority must have a mechanism to identify the contracted individual who is to exercise powers under the PGPA Act or PGPA Rule.

4. DELEGATE PGPA ACT POWERS
The accountable authority can then delegate to the contracted individual, in an instrument of delegation, the powers under the PGPA Act or PGPA Rule that they are required to exercise.

5. EXERCISE OF PGPA ACT POWERS
The contracted individual can then exercise the delegated powers in accordance with the contract, the delegation instrument, the AAI s and the general duties of officials under the PGPA Act.
Common scenarios where NCCEs engage contractors to use and manage public resources

26. This section gives examples of common arrangements entered into by NCCEs to engage contractors to use and manage public resources. These scenarios are provided to help NCCEs identify whether a contractor is exercising a power under the PGPA Act or PGPA Rule.

Scenario 1: Collection of fees

- The accountable authority of an NCCE engages a contractor to collect fees from the public for a Commonwealth service.
- Under the direction of an official of the NCCE, a contracted individual (an employee of the contractor) collects money for the Commonwealth on Commonwealth premises, and deposits it in the NCCE’s bank account. The contracted individual does not exercise discretion about the fees to be paid and performs a processing task.
- The individual does not exercise powers under the PGPA Act or PGPA Rule, and therefore cannot be prescribed as an official. The contractor’s rights and obligations should be specified in their contract.

Scenario 2: Property service providers

- An external property service provider is responsible for making payments to a property owner on behalf of an NCCE (which leases its premises). The provider makes the payments by drawing on the entity’s bank account, under an arrangement between the Commonwealth and the provider.
- Whether an employee of the property service provider exercises a power under the PGPA Act depends on whether that contracted individual makes decisions in relation to the payments (i.e. ‘administers’ an arrangement under section 23 of the PGPA Act) or merely processes payments.
- If the contracted individual performs processing tasks under instruction without making any decisions about the arrangement, the contracted individual does not exercise a power under the PGPA Act or PGPA Rule.
- If the contracted individual undertakes decision-making functions in relation to the arrangement, they may be administering the arrangement under section 23 of the PGPA Act, thereby exercising a power under the PGPA Act.
- In this case, the arrangement between the service provider and the NCCE should:
  - state that the relevant contracted individual will be an official of the NCCE
  - specify the process for informing the contracted individual that they are required to comply with the general duties of officials under the PGPA Act and other requirements of the finance law
  - specify that the contracted individual is required to exercise powers under section 23 of the PGPA Act
  - specify how the contracted individual is to be identified by name
  - specify the process by which the accountable authority is to be informed of any changes in the contracted individual who is prescribed as an official.
Scenario 3: Outsourcing of procurement

- An NCCE engages a contractor to purchase equipment on behalf of the NCCE. The NCCE will be invoiced directly for the equipment.
- The NCCE provides the contractor with autonomy to decide what goods to purchase and to make the purchase. Contracted individuals (employees of the contractor) are therefore required to enter into an arrangement under section 23(1) of the PGPA Act. The contracted individuals are also required to approve the commitment of relevant money.
- In this case, the arrangement between the contractor and the NCCE should:
  o state that the contracted individuals will be officials of the NCCE
  o specify the process for informing the contracted individuals that they are required to comply with the general duties of officials under the PGPA Act, the finance law, the Commonwealth Procurement Rules and relevant policies of the Commonwealth
  o specify that the contracted individuals are required to exercise powers under section 23 of the PGPA Act
  o specify how the contracted individuals are to be identified by name
  o specify the process by which the accountable authority is to be informed of any changes to the contracted individuals required to exercise powers.

Scenario 4: Engagement of a contractor through an employment firm

- An NCCE engages a contractor (an employment firm) to provide the services of a contracted individual. The contracted individual is required to exercise powers under the PGPA Act or PGPA Rule.
- The arrangement between the contractor and the NCCE should:
  o state that the contracted individual will be an official of the NCCE
  o specify the process for informing the contracted individual that they are required to comply with the general duties of officials under the PGPA Act. This process may involve the NCCE briefing the individual on their duties under the PGPA Act before the individual starts providing services to the NCCE
  o specify the powers under the PGPA Act that the contracted individual is to exercise
  o specify how the contracted individual is to be identified by name
  o specify the process by which the accountable authority is to be informed of any changes to the contracted individual required to exercise the powers.

Part 5 – Summary

27. Where a contracted individual is required to exercise a power under the PGPA Act or PGPA Rule, they must be prescribed as an official. The contracted individual should be prescribed as an official according to item 1A in section 9(1) of the PGPA Rule, which provides that individuals are officials if they are:

(a) independent contractors, consultants or employees of an independent contractor or consultant who are not officials of an NCCE; and

(b) engaged to provide services to a Commonwealth entity and are required to exercise a power under the PGPA Act or PGPA Rule; and

(c) capable of being identified by name by the accountable authority for the purposes of the rule.

28. In addition, the contracted individuals must have a valid delegation from the accountable authority (or subdelegate) of the entity to exercise a power under the PGPA Act or PGPA Rule.
29. Contracted individuals who are prescribed as officials for the purpose of exercising a particular power under the PGPA Act or PGPA Rule are subject to the general duties of officials under the PGPA Act while they provide relevant services to the Commonwealth.

30. If a contracted individual does not exercise a power under the PGPA Act or PGPA Rule, they cannot be prescribed as an official. Their rights and obligations should be specified in their contract with the Commonwealth.